

Panaji, 25th April, 2019 (Vaisakha 5, 1941)

SERIES II No. 4

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 3 dated 18-04-2019 as follows:—

- (1) Extraordinary dated 18-04-2019 from pages 65 to 66 regarding Order from Department of Home.
- (2) Extraordinary (No. 2) dated 22-04-2019 from pages 67 to 69 regarding Notification from Department of Elections.
- (3) Extraordinary (No. 3) dated 22-04-2019 from pages 71 to 72 regarding Order from Department of Home and Notifications from Department of Panchayati Raj and Community Development and from Department of Urban Development.

GOVERNMENT OF GOA

Department of Environment

Corrigendum

No. 7/4/98/STE/DIR/Part-I/60

Read: Order No. 7/4/98/STE/DIR/Part-I/910 dated 26-02-2019, published in the Official Gazette, Series II No. 49 dated 07th March, 2019.

In partial modification to the aforementioned Order, the date specified in the schedule at Serial No. 3 in respect of "Easter Eve" shall be read as 20-04-2019 instead of 21-04-2019.

All the rest of the contents shall remain unchanged.

By order and in the name of the Governor of Goa.

Ravi Jha, IAS, Director & ex officio Joint Secretary.
Porvorim, 17th April, 2019.

Order

No. 1-25-2010/STE-DIR/58

In pursuance of Section 5 of the Right to Information Act, 2005 (hereinafter referred to as "the said Act"), the following officer is hereby re-

designated the First Appellate Authority under the RTI Act for the Goa State Pollution Control Board (GSPCB), against the decision as far as Board is concerned.

Member Secretary (GSPCB) First Appellate Authority (FAA).

Sanjeev Joglekar, I/C Director & ex officio Jt. Secretary (Environment).

Porvorim, 16th April, 2019.

Department of General Administration

Addendum

No. 37/3/2019-GAD-III/1136

Read: Notification No. 37/3/2019-GAD-III/1094 dated 12-04-2019.

The following para shall be added as last para to the Notification dated 12-04-2019 read in preamble:-

"The said Public Holiday will also apply and be available to the registered voters of the poll bound areas even if they are working outside the territorial limits of such areas, notwithstanding whether or not such voters belonging to Central or State Government Offices, Central/State Government undertakings or other entities".

By order and in the name of the Governor of Goa.

Varsha S. Naik, Joint Secretary (GA).

Porvorim, 18th April, 2019.

Department of Labour

Notification

No. 28/2/2019-LAB/Part-I/272

The following Judgment passed by the Labour Court-II, at Panaji-Goa on 26-03-2019 in Case

No. Ref. LC-II/LCC/40/16 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 11th April, 2019.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. LC-II/LCC/40/16

Shri Ravindra Matondkar,
r/o H. No. 29, Jacknim Vaddo,
Parra, Bardez-Goa. Applicant.

V/s

M/s. Canara Bank,
Mathias Plaza Bldg.,
Panaji-Goa. Opponent.

Panaji, dated: 26-03-2019.

Applicant represented by Ld. Rep. Shri Subhash Naik George.

Opponent represented by Adv. Shri R. Gauthankar.

JUDGEMENT

1. This judgment shall determine the claim application of the Applicant dated 06-04-2016, filed U/S 33-C (2) of the I.D. Act, 1947.

2. By the present claim application, the Applicant claimed from the Opponent, an amount of Rs. 4,86,028.56 (Rupees four lakhs eighty six thousand twenty eight rupees and fifty six paise only) along with an interest @ 18% p.a. accrued thereon towards PL encashment on account of retirement from service.

3. The Opponent resisted the claim of the Applicant by filing its written statement dated 08-06-2016 at Exb. 4. The Opponent admitted that the Applicant was employed in their bank as a 'clerk' on 15-05-1984 and got retired from their service on 30-11-2015. The Opponent stated that by letter dated 04-12-2015, the Mapusa Urban Co-op. Bank, Mapusa, Goa, informed them regarding execution case against the Applicant. The Opponent stated that the Mapusa Urban Co-op. Bank also annexed a copy of the order dated 28-09-2015 passed by the Recovery/Sale Officer of Central Registrar of Co-op.

Societies. The Opponent stated that they also received an order dated 30-01-2016 passed by the Recovery/Sale Officer of Central Registrar of Co-op. Societies against the Applicant to attach his retirement benefits payable to him on account of leave encashment and other dues excluding gratuity to a tune of Rs. 14,83,171/- and remit the same to the Mapusa Urban Co-op. Bank, Mapusa, Goa. The Opponent stated that as per the order of the said Recovery/Sale Officer of Central Registrar of Co-op. Societies, they remitted an amount of Rs. 4,48,822.85 (Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only) after TDS deduction to the Mapusa Urban Co-op. Bank on 09-05-2016. The Opponent stated that the Applicant has filed the present application with mala fide intension by suppressing correct facts. The Opponent stated that the claim application of the Applicant itself is not maintainable and deserves to be dismissed. The Opponent stated that neither it has passed any order against the Applicant nor the Applicant was dismissed from service nor the privilege concessions of the Applicant were withdrawn by them so that he can challenge the same before this court. The Opponent submitted that there is no 'industrial dispute' in existence between themselves and the Applicant in the matter to invoke the provisions of I.D. Act, 1947. The Opponent submitted that in fact they were ready to pay PL encashment to the Applicant, however, they received an attachment order from a competent authority i.e. Recovery/Sale Officer of Central Registrar of Co-op. Societies, which constrained them to pay the amount to the Applicant. The Opponent submitted that the claim of the Applicant is frivolous and concealed the factual position. The Opponent therefore prayed for dismissal of the claim application of the Applicant.

4. Thereafter, the Applicant was given an opportunity to file re-joinder if any to the written statement of the Opponent. However, Ld. Rep. Shri Subhash Naik George appearing for the Applicant submitted that he did not wish to file any rejoinder.

5. Based on the pleadings filed by the respective parties, this court framed following issues 26-04-2017 at Exb.10.

1. Whether the Applicant proves that he is entitled to receive from the Opponent a sum of Rs. 4,86,028.56 (Rupees four lakhs eighty six thousand twenty eight rupees and fifty six paise only) towards PL encashment on account of retirement from service along with interest of 18% w.e.f. 01-12-2015?

2. Whether the Opponent proves that the present Claim Application of the Applicant is bad-in-law for the reasons mentioned in para 9 of its written statement?
3. What order?
6. My answers to the aforesaid issues are as under:
 - (a) Issue No. 1 : In the Affirmative.
 - (b) Issue No. 2 : In the Negative.
 - (c) Issue No. 3 : As per final order.

REASONS

Issue No. 1 and 2:

7. I have heard the oral arguments of Ld. Rep. Shri Subhash Naik Jeorge appearing for the Applicant as well as Ld. Adv. Shri R. Gauthankar, appearing for the Opponent Bank. I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by the Ld. Representatives appearing for the respective parties and is of the considered opinion as under.

8. Undisputedly, the Applicant was employed with the Opponent Bank as a clerk since 15-05-1984. The Applicant got retired from the Opponent Bank on 30-11-2015 after attaining the age of 60 years. The Applicant was paid his provident fund, gratuity and pension on his retirement. The Applicant was however, not paid his leave wages as he stood surety/guarantor to the loan obtained by Mrs. Anita K. Dabholkar from the Mapusa Urban Co-op. Bank of Goa Limited and that the said Mrs. Anita Dabholkar defaulted in paying the loan amount. By letter dated 04-12-2015, the Mapusa Urban Co-op. Bank of Goa Limited informed the Opponent Bank regarding execution case against the Applicant and a copy of the order dated 28-09-2015 passed by the Recovery/Sales Officer of Central Registrar of Co-operative Societies. The Opponent also received an order dated 30-01-2016 passed by the Recovery/Sales Officer of Central Registrar of Co-operative Societies against the Applicant with the order to attach the retirement benefits payable to the Applicant on account of his retirement dues excluding gratuity to a tune of Rs. 14,83,171/- and remit the same to the Mapusa Urban Co-op. Bank of Goa Limited, Mapusa, Goa. As per the said order of the Recovery/Sales Officer of Central Registrar of Co-operative Societies, the Opponent remitted an amount of Rs. 4,48,822.85 (Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only) after TDS deduction to the Mapusa Urban Co-op. Bank of Goa Limited, Mapusa, Goa on 09-05-2016. Thus, the court has to decide whether the Opponent Bank can deduct any amount from the retirement dues from

the account of the Applicant and remit the same to the Mapusa Urban Co-op. Bank of Goa Limited, Mapusa, Goa.

9. Ld. Adv. Shri R. Gauthankar, representing the Opponent bank during the course of his oral submissions submitted that the Applicant was very well aware to the default of loan amount sanctioned to Mrs. Vanita Dabholkar, r/o. H. No. 53, Deulwada, Vagator, Goa by the Mapusa Urban Co-op. Bank of Goa Limited, Mapusa, Goa, for which he stood surety. He further submitted that the Applicant was also aware of the order dated 28-09-2015 as well as order dated 09-05-2016 passed by the Recovery/Sales Officer of Central Registrar of Co-operative Societies. He therefore submitted that the Applicant, having stood surety to the loan obtained by Mrs. Vanita Dabholkar from the Mapusa Urban Co-op. Bank of Goa Limited, Mapusa, Goa, cannot absolved from the liability as guarantor and relied upon a judgment of Hon'ble Madhya Pradesh High Court in the case of **Bank of India v/s. Suneel Kumar Dubey and Ors., delivered on 29-05-2017**, wherein the Hon'ble High Court has observed as under:

"12. A surety who seeks to be relieved of the obligation imposed upon him as surety and to be absolved from the liability must not only show that the creditor has, by his acts or conduct, either prevented debtor from doing the things which he undertook to do, or has connived at the debtor's omission to do those things or has enabled him to do something which he ought not to have done, he must also show that the creditor has done some act inconsistent with the rights of the surety, or omitted to do any act which his duty towards the surety required him to do within the meaning of Section 139. Thus, before the surety is discharged the following two conditions must be satisfied (1) the creditor must do an act which is inconsistent with the rights of the surety or he must omit to do any act which his duty to the surety requires him to do; and (2) by the action or inaction of the creditor referred to in ground (one), the eventual remedy of the surety himself against the principal debtor is impaired. The said two conditions were not fulfilled in the present case.

13. The creditor's right to hold his securities until his whole debt is paid is paramount to surety's claim upon such securities, which only arises when the creditor's claim against such securities has been satisfied. The liability of surety is not deferred until remedies against principal debtor are exhausted.

14. Section 140 of the Indian Contract Act, 1872 provides that, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that, he is liable for, is invested with all the rights which the creditor had against the principal debtor."

The principle laid down by the Hon'ble High Court in its aforesaid judgment is not applicable to the case in hand as the facts of the present case are totally different than the case before the Hon'ble High Court.

10. On the contrary, Ld. Rep. Shri Subhash Naik George, representing the Applicant, during the course of his oral arguments submitted that it is well settled law that gratuity, leave salary, family benefit fund (provident fund and pension) are all immune from attachment against any liability and relied upon a judgment of Hon'ble High Court of Madras in the case of **T. Rathikala v/s. the Chief Engineer and Ors., reported in 2017 LLR 1178**, wherein the Hon'ble High Court in para 9 of its judgment has held as under:

"9. As this court after referring to various judgments of the Apex Court has held that neither the gratuity nor the leave salary and provident fund can be attached, the 3rd respondent herein cannot recover the aforementioned benefits for non-payment of loan borrowed by the petitioner's husband during his life time. Secondly, when the petitioner's died on 23-08-2016 while in service, the petitioner/wife and children who are the legal heirs of the deceased employee are entitled to the monetary benefits payable to Late Thirupathy Venkadachalam."

11. The principle laid down by the Hon'ble High Court is applicable to the case in hand. Applying the law laid down by the Hon'ble High Court of Madras, it is held that the Opponent has no right or authority to withhold the amount payable to the Applicant towards his PL encashment amounting to Rs. 4,48,822.85 (Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only). As the Applicant was entitled for the said amount of Rs. 4,48,822.85 (Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only) on 30-11-2015, he is entitled to the said amount along with simple interest @10% p.a. from the date of its maturity till its actual realization. Hence, it held that the claim application of the Applicant is maintainable in law. It is further held that the Applicant proved that he is entitled to receive from the Opponent a sum of Rs. 4,48,822.85

(Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only) along with simple interest @ 10% p.a. from the date of its maturity till its actual realization. The issue No. 1 is therefore answered in the affirmative and issue No. 2 is answered in the negative.

In view of above and with regards to the facts and circumstances of the case, I pass the following order:

ORDER

1. The claim application of the Applicant dated 06-04-2016 filed u/s 33-C (2) of the I.D. Act, 1947, is hereby allowed. Consequently, the Opponent Bank is hereby directed to pay to the Applicant, Shri Ravindra Motondkar a sum of Rs. 4,48,822.85 (Rupees four lakhs forty eight thousand eight hundred twenty two and eighty five paise only) along with simple interest @ 10% p.a. from the date of its maturity till its actual realization.
2. No order as to cost.

Pronounced in the Open Court.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/Part-II/273

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 04-03-2019 in reference No. IT/45/03 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 11th April, 2019

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

(Before Mr. Vicent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/45/03

Workmen,

Rep. by the President,

Zuari Agro Chemicals Ltd. Workers Union,

P. O. Zuarinagar, Goa.

.... Workman/Party I.

V/s

M/s. Zuari Industries Ltd.,
Jaikisaan Bhawan,
Zuarinagar-Goa. Employer/Party II.
Workman/Party I represented by Shri R. G. Furtado.
Employer/Party II represented by Ld. Adv. Shri G. K. Sardessai.

AWARD

**(Delivered on this the 4th day of the month of
March of the year 2019)**

By Order dated 10-07-2003, bearing No. 28/71/
/2002-LAB- (Part), the Government of Goa in exercise
of powers conferred by Section 10 (1)(d) of the
Industrial Disputes Act, 1947 (for short The Act), has
referred the following dispute to this Tribunal for
adjudication.

“(1) Whether the following demands raised by the
Zuari Agro Chemicals Limited Workers Union,
vide their letter dated 17-01-02, before the
management of M/s. Zuari Industries Limited,
Zuarinagar, are legal and justified?

DEMANDS**1. Applicability:**

The Charter of Demands pertains to employees
who are members of ZACLWU only.

2. Working hours:

Effective from 1-1-2002, Administrative
Building, Liaison Office at Panjim, should observe
following timings with lunch break of half an hour
from 13.00 to 13.30 hrs:

8.30 hrs. to 17.00 hrs.

**3. Revision in terms of Service Pay Scales/
Grades:**

Effective from 1-1-2002, the salary grades/
scales and annual increments should be as under:-

Grade	Scale
G-1	Rs. 2000-increment at the rate of 8% of Basic+FDA+PP
G-2	Rs. 2150-increment at the rate of 8% of Basic+FDA+PP
G-3	Rs. 2300-increment at the rate of 8% of Basic+FDA+PP
G-4	Rs. 2450-increment at the rate of 8% of Basic+FDA+PP
G-5	Rs. 2575-increment at the rate of 8% of Basic+FDA+PP
G-6	Rs. 2700-increment at the rate of 8% of Basic+FDA+PP

G-7 Rs. 2970-increment at the rate of 8% of
Basic+FDA+PP

G-8 Rs. 3495-increment at the rate of 8% of
Basic+FDA+PP

G-9 Rs. 4000-increment at the rate of 8% of
Basic+FDA+PP

4. Special salary adjustment:

All members on roll as on 1-1-02 should be
given a special salary adjustment of 30% of last
Basic Salary, FDA and Personal pay drawn.

5. Variable Dearness Allowance:

Effective from 1-1-2002, Variable Dearness
Allowance should be computed and paid, as
follows:-

For every point rise in AICPI (1960=100) over
1200 points a payment of an amount in rupees
equivalent to:-

- 0.0010 per rupee for the first Rs. 2900 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0005 per rupee for the next Rs. 1000 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0006 per rupee for the next Rs. 1000 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0007 per rupee for the next Rs. 1000 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0008 per rupee for the next Rs. 1000 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0009 per rupee for the next Rs. 1000 or part
thereof of basic salary plus FDA plus PP (if any).
- 0.0015 per rupee for basic salary plus FDA plus
PP above Rs. 7500.

6. Gardening Allowance:

Effective from 1-1-2002, all Members should be
paid Gardening Allowance of Rs. 600/- per month
and should be reimbursed in cash.

7. Personal Allowance:

Effective from 1-1-2002, Members should be
paid Personal Allowance of Rs. 1000/- per month.

8. Transport Allowance:

Effective from 1-1-2002, Members should be
paid Transport Allowance of Rs. 1500/- per month.

The amount should be paid as follows:-

Rs. 800. Tax free as presently paid;

Rs. 700. Tax free as Reimbursement in the same
manner as paid to management staff.

9. Educational Allowance:

Effective from 1-1-2002, Members should be paid an Educational Allowance of Rs. 1000/- per month.

10. Washing Allowance:

Effective from 1-1-2002, Members provided with uniforms should be paid Washing Allowances at the rate of Rs. 800/- per month.

11. Technical Literature:

Effective from 1-1-2002, Members should be paid Technical literature of Rs. 500/- per month. The amount should be tax free in the same manner as presently paid to same management staff.

12. Soft Furnishing:

Effective from 1-1-2002, Members should be reimbursed Soft furnishing of Rs. 500/- per month. The amount should be free in the same manner as presently paid to same management staff.

13. Allowance for Employees at SMRC:

Effective from 1-1-2002, Members at Senior Manager's Recreation Centre should be paid an allowance equal to 32 hrs. overtime every month. Alternatively, work timing of 8 hrs. should be introduced.

14. Reimbursement of outdoor expenses and Class of travel:

Effective from 1-1-2002, Members who are away on Company duty for 2-4 hours should be paid Rs. 100/- as outdoor expenses and members who are away on Company duty during the meal time should be paid outdoor expenses of Rs. 250/- per meal.

Members who are away for work for a minimum of eight hours will be paid Rs. 400/- per day.

Members away for one day inclusive of night halt should be reimbursed outdoor expenses at the following rates:-

- | | | |
|--|-----|------------|
| (a) Metro Cities-Mumbai, Delhi, Calcutta & Chennai | ... | Rs. 1500/- |
| (b) All State Capitals | ... | Rs. 1200/- |
| (c) All other locations | ... | Rs. 1000/- |

15. Reimbursement in lieu of Canteen Facilities:

Effective from 1-1-2002, Members should be reimbursed at the rate of Rs. 150/- for every day or part of day worked.

16. Shoes:

Members should be reimbursed cost of two pairs of shoes at the rate of Rs. 2000/- per pair and cost of two pairs of socks.

17. Loans and Advances:**(a) VEHICLE LOAN:**

Effective from 1-1-2002, vehicle loan for purchase of Scooter/Moped/Motorcycle (two wheelers) should be enhanced to Rs. 75000/- or at actual, whichever is less, to be recovered in 48 equal monthly installments with an interest rate of 3%.

In addition to Scooter/Moped/Motorcycle loan, those members who have completed 15 years of service should be given a onetime car loan of Rs. 200000/-. Recovery to cover the balance period of service.

(b) FURNITURE/EQUIPMENT LOAN:

Effective from 1-1-2002, Furniture/Equipment Loan to be enhanced to Rs. 75000/-. Members should be allowed to draw Vehicle Loan and Furniture/Equipment Loan concurrently.

18. Filling of vacancies in entry level in Management Cadre:

At least 75% of the vacancies (entry level to management) should be filled by internal promotions.

19. General:

(a) Members who retire in the intervening period of the Settlement should also be paid the benefits of the Settlement if they retire prior to signing of the Settlement.

(b) Benefits arising out of this Settlement should be given to members of ZACLWU only.

(c) All other facilities provided in earlier Settlement shall stand unaltered.

20. Period of Settlement:

January 1st, 2002 to 31st December, 2004.

21. Shift Allowance:

Effective from 1-1-2002, shift allowance at the rate of 10% of Basic+DA+PP should be paid to all employees working on general shift.

(2) If not, what relief the workmen are entitled to?"

2. Upon receipt of the reference, it was registered as IT/45/03 and registered AD notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim Statement at Exb. 5 and Party II filed the Written statement at Exb. 6. Party I then filed the rejoinder at Exb. 8.

3. In short, the case of Party I is that the Party I has represented the workmen since the year 1981 and has held separate negotiations and entered into

settlements with the two unions functioning in Party II Company. There was a practice of entering into separate identical Settlements which has been upheld by the Courts. After the expiry of the Settlement dated 22-6-1994, the next Charter of demands were raised by Party I and the other Union on 14-12-1995 and 21-2-1996, however the Party II refused to negotiate with Party I Union but held negotiations with other unions and entered into Settlement dated 5-11-1997 with the other Union. The demands of Party I was referred for adjudication vide reference No. IT/81/97 to the Tribunal. The Party I raised a fresh Charter of demands dated 20-1-1999 on behalf of the members and the other Union also raised Charter of demands dated 4-2-1999, however the Party II once again refused to negotiate with Party I and hence the demands were admitted in failure and the Charter of demands dated 20-1-1999 were referred to adjudication vide reference No. IT/62/99, which is pending.

4. The Party I thereafter submitted a fresh Charter of demands on 17-1-2002 on behalf of their members and the other Union raised their Charter of demands dated 28-1-2002. The Party II however refused to negotiate with Party I and excluded them from any discussion. The Party I therefore approached Dy. Labour Commissioner and despite his efforts, the Party II had refused to negotiate with Party I and hence the failure report was submitted by Dy. Labour Commissioner. The appropriate Government referred the aforesaid demands raised by Party I for adjudication. The above demands are not only legal but also just and proper. The Party II has already signed a settlement with the other Union and has paid benefits to all the employees who had signed the declarations. It is therefore fit and proper that the necessary relief as prayed for be granted.

5. In the Written statement, Party II denied the case set up by Party I and has claimed that the Award dated 01-07-1998 covering the period from 01-01-1996 to 31-12-1998, Settlement dated 19-05-2000 covering period from 1-1-1999 to 31-12-2001 have not been terminated by Party I under the provisions of Industrial Disputes Act. The settlement for the period from 1-1-2002 to 31-12-2004 has already been signed with the majority union and the benefits of the said settlement are available to all the workmen after submitting individual declaration. The Party II has been signing single composite settlement with the majority union from 1997 onwards covering revisions in terms and conditions of service applicable to all the workmen. The said settlement was pursuant to the charter which raised demands in respect of all workmen.

The majority of the workmen of Party II have accepted the revision of terms and conditions of service and it is only 27 workers of the company out of 540 workmen who have raised their demands without any justification. The settlement is binding on all the workmen who accepted the benefits of the settlement by giving undertaking. The Party I have already lost their status of registered union effective from 6-8-2004 and as such no dispute survives. The reference is not maintainable and hence the reference be dismissed.

6. In the rejoinder, the Party I denied the case put forth by Party II in the written statement.

7. Issues that came to be framed at Exbt. 9 are as follows:

- 1) Whether the Party I/Union proves that the demands raised by it against the Party II vide letter dated 17-1-2002 are legal and justified?
- 2) Whether the Party II proves that the reference made by the Government is not maintainable?
- 3) Whether the Party II proves that the Party I has lost the status of a registered union w.e.f. 6-8-2004 and ceases to be a representative union of the workers?
- 4) Whether the Party II proves that the dispute does not survive?
- 5) Whether the workmen are entitled to any relief?
- 6) What Award?

8. The Party I examined Shri R. G. Furtado, General Secretary of the Union as witness and produced on record a copy of letter dated 28-2-1997 addressed to the Party I by the Labour Commissioner at Exh. 23, a copy of letter dated 19-10-1999 addressed to the Party II by the Labour Commissioner at Exh. 24, a copy of letter dated 21-9-1999 addressed by the Party II to the Labour Commissioner at Exh. 25, a copy of letter dated 9-9-1999 addressed to the Party II by the Labour Commissioner at Exh. 26, a copy of Order dated 11-1-2002 in Writ Petition No. 318/01 at Exh. 27, a copy of letter dated 28-2-1997 addressed to the Party II by the Labour Commissioner at Exh. 28, a copy of Order dated 27-11-2000 in Writ Petition No. 350/2000 at Exh. 29, a copy of letter dated 16-7-2000 addressed by the Party I to CVP, HR of ZIL at Exh. 30, a copy of letter dated 14-7-2000 addressed to CVP, HR of ZIL at Exh. 31.

9. Shri R. G. Furtado also produced on record a copy of Charter of demands of ZACL Workers Union dated 30-9-1983 at Exh. 39, a copy of Settlement with

ZACL Workers union dated 16-6-1984 at Exh. 40, a copy of Charter of demands of ZACL Workers Union dated 30-12-1986 at Exh. 41, a copy of Settlement with ZACL Workers union dated 30-12-1987 at Exh. 42, a copy of Charter of demands of ZACL Workers Union dated 21-12-1989 at Exh. 43, a copy of Settlement with ZACL Workers union dated 12-2-1991 at Exh. 44, a copy of Charter of demands of ZACL Workers Union dated 21-12-1992 at Exh. 45, a copy of Settlement with ZACL Workers union dated 22-6-1994 at Exh. 46, a copy of Charter of demands of ZACL Workers Union dated 4-2-1994 at Exh. 47, a copy of Settlement with ZACL Workers union dated 4-12-1995 at Exh. 48, a copy of Charter of demands of ZACL Workers Union dated 5-11-1997 at Exh. 49, a copy of Settlement with ZACL Workers union dated 20-1-1999 at Exh. 50, a copy of Charter of demands of ZACL Workers Union dated 19-5-2000 at Exh. 51, a copy of Settlement with ZACL Workers union dated 17-1-2000 at Exh. 52, a copy of Charter of demands of ZACL Workers Union dated 16-1-2003 at Exh. 53, a copy of Settlement with ZACL Workers Union dated 10-1-2005 at Exh. 54, a copy of Award dated 20-10-2015 in respect of Ref. No. IT 62/99 at Exh. 55, a copy of Bye-laws of ZACL Workers Union (Goa) along with copy of notice dated 22-2-2014 and encl. at Exh. 57 colly, a copy of Order dated 9-12-2004 of Hon'ble High Court of Bombay at Exh. 58.

10. On the other hand, Party II examined Shri Pandurang Jadhav and produced on record a copy of Memorandum of Understanding signed by the company with 7 workmen at Exh. 63 colly, a copy of data showing rate of interest on Provident Fund at Exh. 64, a copy of statement of All India Average Consumer Price Index 2006 till 2018 at Exh. 65 and closed its case.

11. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

12. It is a matter of record that Shri R. G. Furtado on behalf of Party I in the cross examination on page 19 voluntarily stated that he is ready to accept the benefits of the Settlement dated 16-1-2003 but is not ready to accept clause 1.1.3 which states "accept the terms and conditions of this settlement in full and final settlement of all demands raised by ZACL Employees Union vide their letter dated January 28, 2002 and by our other union operating at Zuari Industries and all other disputes including those in conciliation or in bipartite/tripartite discussions" and clause 2.1 which states "not to raise or pursue during the operative and binding period of this settlement, any demand involving any increase or

additional financial burden on the company". He has also exception to clause (d) and (e) of the declaration which provides that (d) in view of the acceptance of terms and conditions of above Settlement, I agree that this settlement is in full and final settlement of all the demands raised by me or any union on my behalf, (e) I agree that all my demands are met with and I agree not to either raise or pursue any demand raised by me or any union on my behalf regarding items covered by this settlement.

13. Shri R. G. Furtado thereafter on page 21 has also stated that the Union has also accepting the terms and conditions of Settlement dated 16-1-2003 in full and final settlement of demands raised by Party I dated 17-1-2002, however the Union is not ready to accept clause 1.1.3 and that he also challenged the discrimination in the claim of wages as per Annexure A of the settlement and also clause (d) and (e) of Annexure 6 of the declaration contained in the Settlement dated 16-1-2003. Shri R. G. Furtado on page 23 however claimed that the Union is not challenging and/or disputing the claim of wages as per Annexure A of the Settlement, however on page 24, he stated that he withdraws the voluntary statement on page 19 except that the contract is void when it requires one Party to perform an act which is illegal and on page 21 of the cross examination except the last para and at page 23 of the cross examination except first para. What therefore emerges is that the Party I Union is accepting the benefits of the Settlement dated 16-1-2003 without the above referred clauses in the settlement and obligation at Annexure 6 of the settlement. The point for determination is (1) whether terms of settlement which required Party I to withdraw all the cases pending adjudication is legal and justified and (2) if the above answer is in the negative, whether the Party I is entitled to revised benefits of the Settlement dated 16-1-2003 claimed by it with interest @ 18% compounded annually. The issue No. 1 therefore has to be moulded as above.

14. I have gone through the records of the case and have duly considered the arguments advanced.

My findings to the above issues are as follows:

Issue No. 1	...	Partly in the Affirmative.
Issue No. 2	...	In the Negative.
Issue No. 3	...	In the Negative.
Issue No. 4	...	In the Negative.
Issue No. 5	...	As per final order.
Issue No. 6	...	As per final order.

REASONS

Issue No. 1:

15. Learned Adv. Shri G. K. Sardessai for Party II has submitted that the Party I had not led any evidence in support of Charter of demands and has thus failed to discharge the burden placed on the Union of proving the Charter of demands and on the contrary has claimed that they are accepting all the terms of Settlement dated 16-1-2003 except clause (d) and (e) of Annexure 6 of the declaration contained in the Settlement dated 16-1-2003. He further submitted that the benefits of the settlement cannot be extended to Party I Union until and unless the Party I Union accepts all the terms of the settlement. Clause (d) and (e) of Annexure 6 of the declaration contained in the said settlement cannot be separated from the rest of the settlement as they are one composite whole. He also submitted that the Party I workmen undertook to submit declaration as set out in Annexure 6 to the settlement before extending the benefits before Hon'ble High Court in W.P. No. 635/2004 and therefore, the above claim of Party I workmen cannot be accepted.

16. Per contra, Shri R. G. Furtado for Party I has submitted that clauses incorporated in the settlement signed with the other members of the union referred dated 16-1-2003 which require the members accepting the benefits of the settlement to withdraw all the cases pending for adjudication in the Industrial Tribunal, Hon'ble High Court and before the Conciliation Officer, etc. is void in terms of Section 23 and 28 of the Indian Contract Act which is against the public policy as it oust the jurisdiction of the Court. He further submitted that the Union reserves the right to claim interest @ 18% compounded annually on the arrears of the settlement due and becoming payable as they were not only restrained from signing the settlement due to the clauses mentioned above but the management refused to pay the revised wages of the settlement retrospectively. He also submitted that except the conditions referred above, the Party I union are ready and willing to accept the benefits of the Settlement dated 16-1-2003 at Exh. 53 and therefore arrears be paid to them with interest in terms of law.

17. There are disputes admittedly pending before the Tribunal, the Hon'ble High Court and the office of Commissioner of Labour in conciliation pertaining to unfair labour practices, etc. as mentioned in Exh. 63 colly. The Settlement dated 16-1-2003 was under Section 2(p) which was arrived after negotiation between the company and the majority union, excluding Party I workmen. The said settlement is applicable to all the workmen irrespective of their

union affiliation operating at Zuari Industries Ltd. and to avail the benefits, the workers were required to submit a declaration as reflected in annexure to the settlement, which prohibits raising or pursuing during the operative and binding period of the settlement, any demand involving any increase or additional financial burden on the company. It appears that the Party II seeks to bind the Party I by inserting unconscionable terms in the settlement in such a manner that they favour the contracting parties and impose harsh, unfair, and unjust conditions on the Party I.

18. The contracting parties sought to bind the Party I without having any negotiations with them. They made the unconscionable conditions of the settlement effective, without bringing it to the notice of the Party I at the time when the contract was entered into. The contracting parties agreed to contractual terms, which are prejudicial to the Party I union and which do not concern the majority union. The majority union has sought to settle cases they are not Party to. The majority union instead of safeguarding the interest of the workmen, worked against them. The Settlement dated 16-1-2003 sought to withdraw cases filed by the Party I union and pending before various statutory authorities in which the majority union is not a Party. The settlement at clauses 1.1.3 and 2.1 also sought to withdraw cases of unfair labour practice, etc. pertaining to Party I union members. These terms in the settlement are unreasonable, unfair and unconscionable. The contractual terms basically take away the remedies of law and the beneficial aspect of Party I union and deprive the Courts of its power to do justice. The jurisdiction of the Courts cannot be ousted by an agreement of the parties. This is a clear case of forfeiture of rights and barring of remedy. There is no dispute that the Party I union members did the same/similar work as done by the members of the majority union, but are being denied the revised benefits of the settlement as they did not accept the unreasonable, unfair and unconscionable clauses mentioned therein.

19. It is thus seen that the Party II and the majority union took advantage of the deficient or inequality of bargaining power of Party I to enter into contractual terms and conditions which are prejudicial to Party I. The Party I members were denied the revised benefits of Settlement only because they did not accept the unfair and unconscionable clauses mentioned above, when the cases filed by Party I as stated above were pending before various authorities. Moreover, Section 28 of Indian Contract Act also puts a bar on the agreement in the restraint of legal proceedings from enforcing

their rights by usual legal proceedings. The above terms of the settlement clearly restrained the Party I workmen from exercising their rights by usual legal proceedings in the court of law. The Apex Court in the case of **A.V.M. Sales Corporation vs. M/s. Anuradha Chemicals Pvt. Ltd., in S.L.P. (C) No. 10184 of 2008 dated 17-1-2012** clearly laid down that if any mutual agreement is intended to restrict or extinguish the right of a Party from enforcing their rights under or in respect of a contract, by the usual legal proceedings in ordinary Tribunals, such an agreement would to that extent be void. In other words, the parties cannot contract against a statute. It is thus clear that an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy under Section 23 of the Indian Contract Act, 1872.

20. The cases pending before the Hon'ble High Court, Tribunal and other authorities on signing the declaration annexed to the settlement would be treated as withdrawn and conclusively settled by virtue of the above referred clauses incorporated in the settlement by the Party II, which cannot be permitted as the same is unlawful, fraudulent, immoral and opposed to public policy under Section 23 of the Contract Act. The Party I workmen or for that matter any workmen cannot be restricted from enforcing their rights as per the settlement or the declaration as per annexure 6 of the settlement, which stipulates that the workmen will have no subsisting claim against the management. Such an agreement restraining legal proceedings are not only against public policy but it acts as a hindrance to the dispensation of justice as rightly claimed by Party I workmen, more particularly when the cases filed by Party I against Party II are pending before various authorities.

21. The Settlement dated 16-1-2003 at Exh. 53 is seeking to extinguish the right of Party I workmen to proceed with the cases pending before various authorities and preventing them from approaching the Court of law, even if they have no justifiable cause or would eventually fail in their endeavours. This is precisely the reason why the Party I workmen have objected to the Settlement dated 16-1-2003 and have not accepted the benefit of the settlement by filing the declaration as the contracting parties not only sought the extinction of the right of Party I workmen but also extinction of the remedy for enforcement of their rights and therefore, the above terms which seek to withdraw the pending cases are void and non-est in the eyes of law. It has been also observed in the case of **The Central Inland Water Transport Corporation Ltd. and Anr. Etc. vs. Brojo Nath**

Ganguly & Anr., 1986 SCC (3) 156 that if a contract or term thereof is unconscionable at the time the contract is made, the Court may refuse to enforce the contract as being opposed to public policy. It is therefore evident that unconscionable clauses in the contracts are void under Section 23 of the Indian Contract Act, as the object of the agreement entered by the parties was unlawful and opposed to public policy.

22. The above terms of settlement restricting Party I workmen or other workmen from proceeding with the cases already filed by Party I is against the statute being unfair, arbitrary and unconscionable. The Hon'ble High Court of Bombay in the case of **Cipla Ltd. vs. Anant Ganpat Patil and Ors., 2008(1) Bom CR 78**, has also observed that the workmen are not required to sign away their rights which are available to them under industrial jurisprudence as well as under the principles of natural justice by agreeing to the withdrawal of benefits under the settlement at the whim of the employer and such a clause can be severed from the rest of settlement by applying the doctrine of 'blue pencil.' The above clauses in the Settlement and declaration dated 16-1-2003 at Exh. 53 are unfair and unreasonable and in violation of provision of Section 23 and Section 28 of Indian Contract Act and since the said clauses in the settlement with the majority union are against the public policy and prejudicial to the interest of Party I workmen, they should not be used as instrument of inequality and injustice regarding their rights, which are available to them under Industrial Disputes Act and therefore, the contention of Party I as stated above have to be accepted having merits. The submission of Ld. Adv. Shri Sardesai that the benefits of the settlement cannot be extended to Party I workmen until and unless they accept all the terms and conditions as they are one composite whole as they have agreed before the Hon'ble High Court deserves no acceptance.

23. The Party I workmen have also claimed that they are entitled for interest @ 18 % compounded annually as Party II have unnecessarily dragged into litigation by inserting unconscionable clauses in the settlement with the majority union which is against the public policy and that the Party II by inserting the said clauses restrained the members of Party I from exercising their rights to contest the unfair action of the management in Courts by adopting a policy that required them to sign away their rights which are otherwise available to them. It is also claimed that the Party II deliberately raised the objection which forced the Party I into litigation and

that they also gave benefit of wage revision prospectively, which is not only discriminative but also unfair labour practice under Industrial Disputes Act.

24. Undoubtedly, the Party I workmen are entitled for interest on the arrears of the Settlement dated 16-1-2003 as they were not only restrained from signing of the settlement due to unfair, unreasonable and unconscionable clauses with regard to withdrawing of pending cases mentioned in the declaration but also because the management refused to pay the revised wages of the settlement retrospectively, which they are entitled to. The Party I workmen are entitled for interest in order to compensate them not only for the loss suffered but also for the privilege of the company that used the amount in its business activities. The Party I workmen were also entitled for the interest on account of increase in inflation from 2006 to 2018 which is around 11.89% as per the All India Consumer Price Index produced at Exh. 65 and based on the said figure the average increase in the inflation worked out to be 8.87%, besides the Party I workmen had to face other difficulties. The Party I workmen has also incurred substantial loss on their retirement benefits. The Hon'ble High Court in the case of **S. K. Dua vs. State of Haryana & Anr. in Appeal (Civil) 184 of 2008 dated 9-1-2008** has observed that even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Article 14, 19 and 21 of the Constitution.

25. The Hon'ble High Court of Delhi in the case of **Government of NCT of Delhi vs. SK Srivastava, in W.P. (C) 1186/2012 dated 29-02-2012** has also observed that because of inflation, the real value of the amount that was due to the respondent has substantially eroded and therefore the payment of interest at the GPF rate would only be kind of balm applied to the injuries suffered by the respondent and that it may actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in 2000. The Hon'ble High Court also observed that there is no bar to the grant of interest whenever the leave encashment is delayed for no fault on the part of the employee and therefore the interest on the said amount at the GPF rate by the Tribunal cannot be faulted. The Hon'ble High Court of Bombay in case of **Cipla Ltd., supra** has also directed the company to extend the benefit of the settlement to the workmen with retrospective effect and to pay simple interest @15% p.a. on the arrears. It is therefore clear that the workmen are entitled to interest on the amount of arrears which

they are deprived of. It would therefore be appropriate to pay interest to the Party I workmen @ 9% p.a. on the arrears. The submission of Ld. Adv. Shri G. K. Sardesai as stated above therefore cannot be accepted. The Party I have proved that clauses as stated above referred in the Settlement dated 16-1-2003 are illegal, unjustified and unconscionable and that they are entitled for the benefits of the Settlement with retrospective effect along with interest @9% p.a. on the arrears on submissions of the declarations, with the exception of above clauses. Hence, the above issue is answered accordingly.

Issue No. 3:

26. Ld. Adv. Shri G. K. Sardesai for Party II has submitted that the Zuari Agro Chemicals Ltd. Workers Union does not have the required membership of seven members as mandated under Section 4 of the Trade Unions Act, 1926 for registration of a Union and that the present membership of the Union is only one employee. The membership of the Union has in any event fallen below 10% of the total workmen in the establishment and that in view of Section 9-A read with Section 10-C of Trade Unions Act, they cannot claim to be a registered union. The Union has not filed their returns from 1995 to 2015 nor conducted elections since 1999. Mr. R. G. Furtado is not duly elected an office bearer of the Union and has not been authorized by the Union to depose on behalf of the Union. There is also no resolution to raise Charter of demands on behalf of the Union or to raise industrial dispute.

27. Per contra, Shri R. G. Furtado representing the Union has submitted that the Registrar of Trade Unions cancelled the registration of Party I on 25-4-2008 and that the Party I preferred an appeal against the order of Registrar of Trade Unions before the Industrial Tribunal under Section 12-A of the Trade Unions Act and the Court set aside the order of the Registrar of Trade Unions vide order dated 8-11-2011 and the Party II preferred an appeal before Hon'ble High Court of Bombay at Goa which is pending and consequently, the Union remains a registered union. The said fact is not in dispute. It therefore cannot be said that the Party I has lost status of a registered trade union or ceases to be the representative union of the workers. There cannot be any quarrel that any dispute which affects the workmen as a class is an industrial dispute even though it might have been raised by a minority group. Even, a group of employees not having a union of their own can validly raise an industrial dispute

connected with their employment or non-employment. It is also an admitted fact that the company had signed the settlements from the year 1991 to 1994 with the minority union of Party I workmen of which Shri R. G. Furtado was the office bearer. The submission of Advocate for Party II as stated above therefore cannot be accepted having any merits. Hence, the issue No. 3 is answered in the negative.

Issue No. 2 and 4.

28. Ld. Adv. Shri G. K. Sardesai for Party II has submitted that on expiry of the Settlement dated 22-6-1994, both Unions have submitted their respective Charter of demands. The management of Party II arrived at a Settlement dated 5-11-1997 under Section 2(p) read with Section 18(1) of the Industrial Disputes Act covering the period of Charter of demands and the settlement was accepted by all the workmen except Party I workmen. The Party I Union neither prior to submission of Charter of demands nor after gave any notice of termination of the Settlement dated 5-11-1997 and subsequent thereto a Settlement dated 19-5-2000 was arrived at between the management and ZACLEU on the Charter of demands of Union dated 4-2-1999. The Award dated 1-7-1998 and the Settlement dated 5-11-1997 were in force at the time when appropriate Government made the reference of the dispute to the Tribunal and as per Section 19, a notice is required to be given in writing of an intention to terminate the settlement by one of the parties to the other Party or parties to the settlement. Shri Furtado has admitted that the Award dated 1-7-1998 has not been terminated nor the Settlement dated 5-11-1997 has been terminated. There cannot be a waiver of requirement of a written notice to put an end to the settlement by conduct or implication. The notice of termination of settlement or award is required under the said provision of law and therefore, the present Charter of demands is bad in law.

29. The Memorandum of Understanding dated 16-8-2018 has been produced by Party II at Exh. 63 colly signed by the company and the workmen viz. S/Shri V. V. Prabhudessai, S. Priolkar, F. Fernandes, P. Sangodkar, Sudhir Naik, R. S. Shirodkar and Anil Govekar and in clause (e) of the said Memorandum of Understanding in the case of Mr. Sudhir Naik, the parties agreed to file the understanding before the Tribunal with a request for an award in terms of the said understanding in the references mentioned

therein. Similar clauses are incorporated in the Memorandum of Understanding of other workmen referred above. There is no dispute that the Party II obtained an award in terms of said MOU in the cases of Sudhir Naik, R. S. Shirodkar and Anil Govekar on 1-9-2015. The said objection was never raised by Party II before passing the said awards in cases of above three workmen. The objection raised by Party II is therefore without any basis.

30. Moreover, the Industrial Disputes Act does not prescribe the consequences of non compliance of Section 19(2). The award or settlement does not become non-est but continues to be binding and in force between the parties and subsists until a new award or negotiable settlement takes place and until such a new contract or an award replaces the previous one, the former settlement or award will regulate the relations between the parties. The above contention therefore lack a legal basis, more particularly when the Settlement dated 16-1-2003 has already been signed with the majority union and the benefits of the union are available to all the workmen of Party II including the members of Party I provided they agree to the terms of the settlement by submitting an undertaking as specified at clause 29 of the Settlement dated 16-1-2003. It is therefore, the above objections raised by Party II cannot sustain. The Party II having failed to prove that the reference made by the appropriate Government is not maintainable and that the dispute does not survive, the issue Nos. 2 and 4 are answered in the negative.

31. In the result, I pass the following:

ORDER

- i. The present reference stands partly allowed.
- ii. The Party II is directed to pay the arrears of the Settlement dated 16-1-2003 to Party I workmen with retrospective effect on submissions of the declarations, with the exception of above clauses, alongwith interest @ 9% p.a. within 60 days of the publication of the Award.
- iii. Inform the Government accordingly.

Sd/-
(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2019-LAB/Part-II/274

The following award passed by the Labour Court-II, at Panaji-Goa on 27-03-2019 in Case No. Ref. LC-II/C-IT/04/2019 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).
Porvorim, 11th April, 2019.

LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Case No. Ref. LC-II/C-IT/04/2019

Shri Sudhakar Borkar,
Traffic Controller,
KTC, Panaji-Goa,
Rep. by Adv. Anand Kundaikar,
Panaji-Goa. Workman/Party I.

V/s

M/s. Kadamba Transport Corporation Ltd.,
Alto Porvorim-Goa Employer/Party II.
Workman/Party I represented by Adv. Shri A.
Kundaikar.

Employer/Party II represented by Adv. Shri P.
Agarwal.

Panaji, dated 27-03-2019.

AWARD

1. This Award, shall determine the complaint dated 14-12-2018 filed by the Complainant u/s 33-A of the I.D. Act, 1947.

2. It is the case of the Party I/Workman (for short, the Workman) in brief that the Government by its order dated 15-01-2016 was pleased to refer the Industrial Dispute in exercise of the powers conferred by Clause (d) of sub-section (1) of Section (10) of the I.D. Act, 1947 for adjudication to the Industrial Tribunal as to whether there is an anomaly in his pay fixation made by the Employer/Party-II (for short "Employer") thereby depriving monetary benefits to him and that if the answer to the said issue is in affirmative, than what relief he is entitled to. He stated that pursuant to the said order, the reference was registered under No. REF/LC-II/03/2016 and is pending before this Labour Court II. He stated that

during the pendency of the reference before the Labour Court, the management of the Employer was pleased to extend the monetary benefits of Seventh Central Pay Commission to all its employees w.e.f. 01-11-2018 in terms of its BOD decision taken vide resolution No. 93/17. He stated that on recommendation of the departmental promotional committee, he was granted third up-gradation in the pay band of Rs. 9300-34800+4200/- grade pay under the Modified Assured Progression Scheme (MACPS) and his basic pay was fixed at Rs. 12480/- + + Rs. 4200/- grade w.e.f. 01-01-2013. He stated that he was released with the revision in pay scales from time to time which were extended by the Employer. He stated that however, on spacious plea of pendency of the disputes before the Industrial Tribunal, the benefits of the Seventh Central Pay Commission was differed arbitrarily. He stated that he was not called for the personal hearing before the order dated 29-11-2018 was passed by the General Manager and notified on the notice board of the respective depots. He submitted that the said vindictive acts on the part of the General Manager is in violation of the principles of natural justice. He stated that the workman was made eligible for sixth central pay commission and therefore there is no reason of whatsoever nature to differ the implementation of the Seventh Central Pay Commission. He stated that the memorandum of settlement was signed u/s 12 (3) r/w section 18 (3) wherein para 7 agreed to bind themselves by revised pay scales till such time the scales of pay and other benefits are further revised in future in respect of Government servants/employees of the Government. He stated that in accordance with provisions contained in Rule 10 of CCS (RP) Rules, 2008, there will be uniform date of annual increment, viz 1st July of every year, employees completing 6 months and above in the revised pay structure as on 1st July will be eligible to be granted the increment on 01-01-2006 in the pre revised scale as one time measure and thereafter will get the next annual increment in the revised pay structure as on 01-07-2006 as per Rule 10 of CCS Rules, 2008. He stated that the said office memorandum was adopted by the Government and therefore the same is applicable to the corporation in view of the settlement. He stated that the sixth central pay commission recommended Modified Assured Career Progression Scheme (MACPS) and the dispute is not in respect of Sixth Central Pay Commission as the workman is made eligible for sixth central pay commission by virtue of memorandum of settlement.

He stated that the General Manager, Shri Sanjay L. Ghate notified the order dated 09-11-2018, by which the benefits of the revised pay commission of the employees as shown under Annexure A wherein the name of the workman is appearing and the entitlement of seventh pay commission was differed till the disputes pending before the labour court is resolved/settled. He stated that the General Manager, Sanjay Ghate is liable for the violation of the service conditions and necessary action deem fit to be taken against the General Manager. He stated that the workman was not given personal hearing nor any explanation was sought in respect of denial of the extension of the seventh central pay recommendations. He stated that the Employer failed to seek approval of the Labour Court II before differing the implementation of the seventh central pay commission as the adjudication was pending before the Labour Court and therefore the action of the General Manager is vindictive and amounts to unfair labour practice. He stated that the General Manager failed to appreciate that though some disputes are pending before the Labour Court II/ Labour Commissioner, the General Manager selectively differed the implementation of the eligibility to pressurize him. He stated that the act of the General Manager is vindictive and has no right of whatsoever nature to pass the impugned order altering the service conditions to the prejudice of the workman. He stated that however in the instance case in the flagrant abuse of the process of law and during the pendency of the proceedings before the Labour Court II, the General Manager acted in abuse of the process of law and is liable for action for violation of provisions of Section 33-A of the Industrial Disputes Act. The workman therefore, prayed that this Hon'ble Court be pleased to hold that the differing of the seventh central pay commission is illegal and he may be considered for the eligibility of the seventh central pay commission from the date of his entitlement with consequential benefits.

3. The matter was fixed for filing written statement of the Employer on 06-03-2019, however, Ld. Adv. Shri P. Agarwal, representing the Employer, filed an application for direction to produce the documents relied upon by the Workman in his list of documents as the same are neither filed in the court nor produced to them and that the said documents are required for filing its effective reply/ /written statement. The matter was therefore fixed for filing reply of the workman on 27-03-2019.

4. On 27-03-2019, Ld. Adv. Shri A. Kundaikar appearing for the Workman as well as Ld. Adv. Shri P. Agarwal remained present. Ld. Adv. Shri A. Kundaikar, appearing for the workman filed an application for withdrawal of the complaint filed u/s 33-A of the I.D. Act, 1947 at Exb. 7 and submitted that the complaint filed by him be dismissed as withdrawn. No objection given by the Ld. Adv. Shri P. Agarwal appearing for the Employer. It is the workman, who has filed the present complaint claiming violation of service conditions, desires to withdraw his complaint, I have no other alternative rather than to allow the application for withdrawal of the complaint filed by the workman. Hence, I allow the application for withdrawal of the complaint. Consequently, the complaint dated 14-12-2018 filed by the complainant shall stand dismissed as withdrawn.

In view of the above, I pass the following Order.

ORDER

1. The present Complaint filed by the Complainant u/s 33-A of the Industrial disputes Act, 1947 stands dismissed as withdrawn.
2. No Order as to Cost.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer
Labour Court-II.

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